



Women's Economic Security Package

Lawyer-assisted family law property mediation – Legal Aid Commission trial

November 2018

What is the measure?

- The Australian Government will provide \$10.3m in additional new funding for Legal Aid Commissions (LACs) in each state and territory to conduct a two year trial of lawyer-assisted mediation to help families divide their property after separation.
- The trial will be targeted at families with a property pool of up to \$500,000, excluding debt and will run from January 2020 to December 2021.
- Legal Aid lawyers will support clients through the mediation process, providing legal advice as required and empowering the parties to reach an agreement between themselves.
- Lawyers will also help their clients to document their agreement and file it with the court. If an agreement cannot be reached after mediation, lawyers will be able to continue to provide advice to clients about their options, and assist them through the court process.
- This trial will support separating couples who require legal advice to mediate and reach agreement on family law property splits, without having to go to court.

Why is the Government funding this measure?

- The Government currently funds lawyer-assisted mediation services for parenting disputes, but not for property disputes.
- Property cases make up more than half of all new cases filed in the Family Court, and over a third of all new family law cases filed in the Federal Circuit Court, each year (Annual Report, 2016-17).
- A recent study conducted by the Australian Institute of Family Studies (AIFS) involving 10,000 separated parents, indicated that 57.5% of property matters have asset pools of less than \$500,000. The AIFS study also showed the average time to finalise property arrangements is 15 months.
- There is a growing backlog of cases in the family courts, and the delays for families are untenable.
- LACs have a high success rate in using lawyer-assisted mediation to help separated families resolve disputes about children. Similar success is anticipated under this trial.
- Last year, Legal Aid Commissions ran 7,636 mediations for family law disputes about children. In 77.3% of these cases, legal aid lawyers helped their clients reach a full or partial agreement without going to court.
- Lawyer-assisted mediation can help separating couples with more complex needs, for whom normal mediation would not be appropriate. For example, receiving legal advice during a mediation can support parties to reach an agreement in cases where there may have been a history of family violence, including financial abuse, or in cases where cultural factors might influence the negotiating capacity of the parties.
- Without affordable legal assistance, many people, especially women, are more likely to agree to inequitable settlements to avoid the stress and cost of going to court, or to abandon their property claims altogether. This trial will support women to make informed decisions about splitting their property after a relationship breakdown.

What is the expected impact of the measure?

- The trial will include a more relaxed means and merit test than is currently required for a grant of legal aid, meaning more separating couples will be eligible to access the service.
- An estimated 650 couples across Australia are expected to benefit from lawyer-assisted mediation under the 2 year trial.
 - An estimated 100 couples per state in New South Wales, Victoria, Queensland, South Australia and Western Australia, and an estimated 50 couples each in the Australian Capital Territory, Tasmania and the Northern Territory.
- Over the medium term, there is likely to be a reduction in the number of new court filings for property cases (following the roll out of mediation for parenting matters, there was a 25% reduction in new court filings).

Case study

Samira and Glen have separated after 14 years and need to divide their property. Samira thinks their property is worth less than \$500,000 (not including their debt), however it's complicated as Glen's brother owns a third of the family home. Samira can't afford a private lawyer and feels intimidated by Glen, because he knows more about their finances than she does, and since the separation he has been verbally abusive toward her. Samira is so anxious about the situation that she is considering walking away from the relationship with nothing, until she hears that her local Legal Aid Commission can give her legal advice on her options, and support her to mediate a property settlement with Glen. Her experienced legal aid lawyer represented her during the mediation conference, which meant Glen couldn't bully her. They were able to reach an agreement at mediation which Samira was happy with, but she was relieved to know that if they couldn't agree, she would have been supported by her legal aid lawyer through the court process. This meant she didn't have to accept an unfair agreement, and didn't have to go to court to divide their property.